

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4113

Appeal PA16-661

Legal Aid Ontario

February 23, 2021

Summary: Legal Aid Ontario (LAO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all proposals submitted in response to a specific Request for Proposal. After notifying three proponents of the request and seeking their submissions on the disclosure of the requested information, LAO denied access to the responsive proposals claiming the mandatory exemptions at section 17(1) (third party information) and section 21(1) (personal privacy). The requester appealed LAO's decision. In this order, the adjudicator upholds LAO's decision in part, ordering it to disclose the information to which neither section 17(1) nor section 21(1) is found to apply or the parties consented to disclose.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended, ss. 2(1) (definition of "personal information"), 17(1)(a) and (c), 21(1) and 21(3)(d).

Orders and Investigation Reports Considered: Orders MO-1706, MO-2151, MO-3058-F and PO-3310.

OVERVIEW:

[1] Legal Aid Ontario (LAO) is an independent, publicly funded and publicly accountable non-profit corporation established pursuant to the *Legal Aid Services Act, 1998*, to administer the Province of Ontario's legal aid program. Its mandate includes promoting access to justice for low-income individuals by providing legal services in a cost-effective and efficient manner. To accomplish its mandate, LAO provides legal

services in different languages and multi-language interpretation and translation services are required.

[2] LAO received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all proposals submitted in response to a specific Request for Proposal (RFP) for the provision of multi-language interpretation and translation services, including pricing information set out in the proposals. LAO received proposals from four proponents, one of which was the requester in this appeal. The requester sought access to the proposals submitted by the other proponents.

[3] After consulting with the proponents who submitted the responsive proposals (the affected parties), LAO issued a decision denying access to them, in their entirety, pursuant to the mandatory exemptions at sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*.

[4] The requester (now the appellant) appealed LAO's decision not to disclose the responsive records to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore resolution.

[5] As mediation did not resolve the issues on appeal, the file entered the adjudication stage of the appeal process where an adjudicator may conduct an inquiry.

[6] The adjudicator began his inquiry into the appeal by seeking representations from LAO and the three affected parties. LAO and two affected parties submitted representations (affected parties A and B). Both affected party A and affected party B provided copies of their proposals, identifying limited portions that they either consent to disclose or they no longer claim are exempt from disclosure.¹ The third affected party, affected party C, advised that it did not wish to submit representations.

[7] Subsequently, I sought representations from the appellant. I also invited the appellant to respond to the representations of LAO and the portions of the affected parties' representations that were found not to fall within the confidentiality criteria set out in this office's *Code of Procedure* and *Practice Direction 7*. The appellant provided representations in response.

[8] Following receipt of all representations, the appeal was transferred to me to complete the inquiry.

[9] In this order, I uphold LAO's decision in part and order disclosure of the information which I find is not exempt under either section 17(1) or section 21(1) of the *Act*.

¹ The information to which affected parties A and B no longer object to disclosing has not yet been disclosed to the appellant. For this information, the portions that are not exempt under section 21(1) are ordered disclosed, below.

RECORDS:

[10] The records at issue are proposals submitted by three affected parties in response to an RFP by LAO for the provision of multi-language interpretation and translation services.

[11] Proposal A submitted by affected party A is 86 pages with nine appendices, for a total of 167 pages.

[12] Proposal B submitted by affected party B is 54 pages with no appendices.

[13] Proposal C submitted by affected party C is 19 pages with one appendix, for a total of 23 pages. Although the index to proposal C indicates on pages 3 and 4 that the proposal should also include appendices 2 to 12, LAO has confirmed that these were not attached to the proposal that was submitted and were never received from the proponent.

ISSUES:

- A. Does the mandatory exemption for third party information at section 17(1) apply to the records?
- B. Do the records contain "personal information as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the mandatory personal privacy exemption at section 21(1) apply to the records?

DISCUSSION:

A. Does the mandatory exemption for third party information at section 17(1) apply to the records?

[14] LAO and the affected parties claim that the third party exemption at section 17(1) applies to exempt the records from disclosure. Between them, they rely on sections 17(a), (b) and (c), which state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency[.]

[15] Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.² Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.³

[16] For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraphs (a), (b), (c) and/or (d) of section 17(1) will occur.

Part 1: Does the record reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information?

[17] LAO and all three of the affected parties submit, and I accept, that the records at issue reveal commercial and financial information. This office has consistently found that commercial information is information that relates solely to the buying, selling or exchange of merchandise or services.⁴ This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.⁵ This office has also consistently held that financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods,

² *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

³ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

⁴ See Order P-493 which first adopted this definition.

⁵ Order PO-2010.

pricing practices, profit and loss data, overhead and operating costs.⁶

[18] As the proposals relate to the sale and purchase of interpretation and translation services by the affected parties to LAO and contain information about the cost of those services, I find that they reveal commercial and financial information. I find that the first part of the test under section 17(1) has been met.

Part 2: Did the affected parties supply the information to LAO in confidence, either implicitly or explicitly?

[19] LAO and all three affected parties take the position that the affected parties supplied the information contained in their proposals to LAO with an explicit expectation of confidentiality as required by part 2 of the section 17(1) test. I find that the evidence before me supports this position.

Supplied

[20] The requirement that the information was “supplied” to the institution reflects the purpose of section 17(1) of protecting the informational assets of third parties.⁷ Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁸

[21] The contents of a contract involving an institution and a third party will not normally qualify as having been “supplied” for the purpose of section 17(1). The provisions of a contract, in general, have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party.⁹

[22] There are two exceptions to this general rule which are described as the “inferred disclosure” and “immutability” exceptions. The “inferred disclosure” exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the third party to the institution.¹⁰ The immutability exception arises where the contract contains information supplied by the third party, but the information is not susceptible to negotiation. Examples are financial statements, underlying fixed costs and product samples or designs.¹¹ Neither of these exceptions

⁶ Order PO-2010.

⁷ Order MO-1706.

⁸ Orders PO-2020 and PO-2043.

⁹ This approach was approved by the Divisional Court in *Boeing Co., cited above, and in Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII) (*Miller Transit*).

¹⁰ Order MO-1706, cited with approval in *Miller Transit* at para 33.

¹¹ *Miller Transit* at para 34.

are relevant here.

In confidence

[23] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹²

[24] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all of the circumstances of the case are considered, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.¹³

Representations on whether the information in the proposals was supplied by the affected parties in confidence to LAO

[25] LAO submits that the affected parties supplied the information contained in their proposals with a reasonable expectation of confidentiality. They note that the RFP explicitly stated the following:

LAO Subject to the Freedom of Information and Protection of Privacy Act

Information provided by a Proponent may be released in accordance with the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended. A Proponent should identify any information in its proposal or any accompanying documentation that is of a confidential nature for which confidentiality is to be maintained by LAO.

The confidentiality of any information that is of confidential nature will be maintained by LAO, except where an order by the Information and Privacy Commission or a court requires LAO to do otherwise.

¹² Order PO-2020.

¹³ Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

The submission of a proposal will be deemed to be consent by the Proponent for the disclosure of the proposal to such persons as may be employed, retained or designated by LAO to review and evaluate the proposal, to the making of copies of the proposal for purposes of such review and evaluation, to the inclusion of the proposal or information therefrom in any agreement to be made with LAO, and to the disclosure and use of the proposal to the extent necessary to enable LAO to exercise any rights or to perform any obligations under any Agreement made with the Proponent.

[26] Each of the affected parties submit that they supplied their proposals to LAO with a reasonable expectation that LAO would keep the information that the proposals contained in confidence and that this expectation was implicit in the RFP's confidentiality provision.

[27] The appellant submits that the proposal, including "cost information" and "bid rate form information," should not be considered private or confidential information. He does not make any submissions to dispute the other parties' position that the proposals at issue were supplied to LAO with an implicit expectation of confidentiality.

Analysis and finding with respect to whether the information was supplied to LAO by the parties, in confidence.

[28] As noted above, the general rule is that information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.¹⁴ For the reasons set out below, I am satisfied that all three affected parties "supplied" the information in their proposals to LAO.

[29] With respect to whether information contained in proposals can be considered to have been supplied, past orders of this office are informative. For example, in Order MO-1706, Adjudicator Bernard Morrow found that information contained in a proposal was supplied by an affected party to the institution, and was not the product of negotiations. Similarly, in Order MO-3058-F, Assistant Commissioner Sherry Liang considered (among other records) the disclosure of portions of a successful proposal and found that the information was "supplied." She noted that the content of a winning proposal submitted in response to an RFP submission is not a contract even if the resulting contract may contain terms that formed part of an RFP submission. Assistant Commissioner Liang stated:

I am aware that in some orders, adjudicators have found the contents of a winning proposal to have been "mutually generated" rather than "supplied", where the terms of the proposal were incorporated into the

¹⁴ Orders PO-2020 and PO-2043.

contract between a third party and an institution. In this appeal, it may well be that some of the terms proposed by the winning bidder were included in the town's contract with that party. But the possible subsequent incorporation of those terms does not serve to transform the proposal, in its original form, from information "supplied" to the town into a "mutually generated" contract. In the appeal before me, the appellant seeks access to the winning proposal, and that is the record at issue.

[30] In the appeal before me, three proposals are at issue. Two proposals were unsuccessful in their bid to secure the services sought by LAO through the RFP. In my view, it is clear that the information in these proposals falls within the general rule as information that was directly supplied to an institution by a third party.¹⁵ I accept that the information in the proposals that did not result in the affected party securing the work set out in the RFP were "supplied" to LAO within the meaning of section 17(1).

[31] One of the three proposals is the successful proposal. While I accept that in some circumstances, a winning proposal might become, on acceptance, the basis of the agreement between the parties when no separate contract between the parties is created, in this appeal, as in the appeal that gave rise to Order MO-3058-F, the request is for access to the proposal itself. The proposal is the record that I must consider.

[32] For similar reasons as those expressed by Assistant Commissioner Liang in Order MO-3058-F, I find that even if some of the terms of the winning proposal were incorporated in the resulting contract with LAO for translation and interpretation services, this does not transform the proposal, in its original form, from information "supplied" by the proponent into a "mutually generated" contract. I am therefore satisfied that the information in the successful proposal was also "supplied" to LAO within the meaning of section 17(1).

[33] Turning to the "in confidence" requirement, I am satisfied that the affected parties supplied their proposals to LAO with a reasonable expectation of confidentiality based on objective grounds. I accept the affected parties' submissions that state that they submitted their proposals to LAO on the basis that the information within them was confidential and was to be kept in confidence. The content of the proposals support their submissions. They contain descriptions of the proponents' respective methodologies and approaches to the project, examples of their prior or current work, descriptions of their workforce, and financial details such as pricing and costs. In my view, the nature of this information supports a conclusion that the affected parties had, at the very least, an implicit expectation of confidentiality with respect to the information that they supplied to LAO. Additionally, there is no evidence before me to suggest that any of the affected parties or LAO disclosed the proposals or made them publicly available at any time. As a result, I accept that the affected parties prepared their proposals in response to LAO's RFP and not for a purpose that would entail

¹⁵ Orders PO-2020 and PO-2043.

disclosure.

[34] I find that the proposals were “supplied” “in confidence” to LAO by the affected parties. The second part of the section 17(1) test has been met.

Part 3: Could the disclosure of the information at issue give rise to a reasonable expectation of the occurrence of one of the harms specified in section 17(1)?

[35] The final part of the test for exemption under section 17(1) requires that disclosure of the information “could reasonably be expected to” lead to one of the harms set out in that section. For the reasons outlined below, I find that the reasonable expectation of harm under section 17(1) has been established for some of the information in the responsive proposals but not for all of the information.

[36] As indicated above, LAO and the affected parties submit that a number of the harms set out in section 17(1) could reasonably be expected to occur were the information in the proposals disclosed to the appellant. Specifically, they submit that disclosure of the information could:

- prejudice significantly the affected parties’ competitive positions or interfere significantly with their contractual or other negotiations (section 17(1)(a));
- Result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied (17(1)(b));or
- result in undue loss to the affected parties or gain to other parties (section 17(1)(c)).¹⁶

[37] It has been established that parties resisting disclosure must establish a risk of harm from disclosure of the record that is well beyond the merely possible or speculative, but need not prove that disclosure will in fact result in such harm.¹⁷ Parties should provide detailed evidence to demonstrate the harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁸ The failure of a party resisting disclosure to provide detailed evidence will not necessarily defeat the claim for exemption where harm can be inferred from the records themselves and/or the surrounding circumstances. However, parties should not

¹⁶ All three affected parties submit, either explicitly or implicitly, that the harms set out in sections 17(1)(a) and (c) could reasonably be expected to result if information in their proposals were disclosed. Only affected party A submits that the harm in section 17(1)(b) could reasonably be expected to occur.

¹⁷ *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 S.C.R. 674, *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁸ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.

assume that the harms under section 17(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.¹⁹

Representations, analysis and findings on the reasonable expectation of harm

[38] LAO submits generally that disclosure of the information contained in the proposals could reasonably be expected to result in the affected parties experiencing harm as contemplated by section 17(1). Its representations do not address how the disclosure of specific information could result in the affected parties experiencing a specific type of harm or provide any more detail to support its claim.

[39] In response to my Notice of Inquiry, both affected parties A and B identified limited portions of their proposals that they are now prepared to disclose. Affected party A provided a chart setting out the information that it continues to claim is exempt from disclosure and brief submissions on how disclosure of each of those portions could reasonably be expected to result in one or more of the harms set out in sections 17(1)(a), (b) or (c). Affected party B's representations largely consist of a severed copy of its proposal as well as a general statement that the severed information has commercial value and its disclosure could reasonably be expected to give a competitor a competitive advantage. Although affected party C did not provide representations in response to my Notice of Inquiry or identify any portions of its proposal that it is prepared to disclose, in response to LAO's notification of the request, it made brief submissions addressing the reasonable expectation of harm on disclosure, which I will consider. I will address the affected parties' submissions on the disclosure of information in their respective proposals in more detail below.

[40] Although the appellant does not provide detailed representations in response to the affected parties' submissions on the reasonable expectation of harm with disclosure of their proposals, he disputes that disclosure could reasonably be expected to give rise to the harms set out in section 17(1). I have summarized his submissions here:

- The appellant submits that in another competition, a request for his company's proposal was made and it was disclosed.
- The appellant submits that the affected parties' proposals, in their entirety, cannot be considered a "trade secret" and suggests that while some of the substance of the proposals might arguably consist of information subject to section 17(1), the way in which the affected parties have presented that information in the proposal should not be exempt from disclosure.
- The appellant submits that a number of the affected parties state "we do not have permission from clients/subcontractors to divulge that information" and argues that if they don't have "permission" why and how did they divulge this information to LAO?

¹⁹ Order PO-2435.

- The appellant notes that the affected parties state “this information could remove our competitive advantage.” He submits some of the affected parties have been “continuously and relentlessly demanding to see their competitors’ proposals for that exact reason: to obtain information about their competitors in order to undermine and/or gain a competitive advantage.” He also submits that simply stating that something could reasonably be expected to give a competitor an advantage does not necessarily make it so.
- The appellant submits generally that “cost information” and “bid rate form” information should not be considered confidential information.

Proposal A

[41] Affected party A consents to the partial disclosure of its proposal and objects to the release of the remainder, citing the exemptions at sections 17(1)(a), (b) and (c). It explains that the RFP process is an extremely competitive one and the format of a successful proposal takes years to develop, involving a considerable investment of time and effort. It submits that it went through its proposal carefully and concluded that disclosing it in its entirety would be prejudicial to its interests as the records clearly show how it organized its information and pitched its position to LAO including setting out its unique pricing strategy based on languages and volumes. As previously mentioned, affected party A prepared a chart identifying the information that it does not want disclosed and a brief explanation of how section 17(1) applies to it. Below, I will consider affected party A’s submissions in that chart and will determine whether its representations establish that any of the harms at sections 17(1) could reasonably be expected to result from the disclosure of that information.

[42] I note that in its chart, referenced above, affected party A claims that section 17(1)(a), (b) and (c) apply to all of the information that it does not want disclosed. However, in its submissions, it does not specifically address how the disclosure of any of the information in its proposal could reasonably be expected to result in similar information no longer being supplied to the institution as contemplated by section 17(1)(b).²⁰ As the party resisting disclosure bears the onus of establishing that the exemption applies, in the absence of evidence on this harm, I find that section 17(1)(b) has not been established for any of the information in proposal A and in my view, this harm cannot be inferred. Moreover, previous orders have found that companies seeking to do business with public institutions understand that certain information regarding how it plans to provide the services sought will be made public. These orders have generally not accepted that the disclosure of information provided in response to an RFP that is general in nature and describes the services the proponent proposes to provide, could reasonably be expected to result in a reluctance on the part of companies to participate in future projects.²¹ I agree with these orders and find the

²⁰ Neither affected party B nor affected party C submit that section 17(1)(b) applies in the circumstances.

²¹ See Orders MO-2151, MO-2164 and PO-3310.

reasoning that they apply relevant to the circumstances of this appeal.

[43] Accordingly, I will not consider the possible application of section 17(1)(b) further, for any of the proposals. I will, however, consider whether affected party A's representations establish whether either of the harms at sections 17(1)(a) or (c) could reasonably be expected to result from the disclosure of the information in its proposal it does not consent to disclose.

Mandatory requirements

Proof of Financial Viability and Proof of Insurance

[44] The RFP required the parties to provide proof of financial viability and proof of insurance. Affected party A does not submit that its narrative response to the RFP's mandatory requirement of proof of financial viability and proof of insurance on page 13 should not be disclosed, but it submits that portions of Appendix 1, which provides the requested documentary evidence to fulfill that requirement, are exempt from disclosure under section 17(1).

[45] The information in Appendix 1 that affected party A claims is exempt under section 17(1) provides documentary proof of affected party A's financial viability as well as proof of its insurance. From my review, it contains information about affected party A that is commercially valuable. I accept that its disclosure could reasonably be expected to result in prejudice to affected party A's competitive position contemplated by section 17(1)(a) and could also reasonably be expected to result in undue loss to the affected party as contemplated by section 17(1)(c).

Customer references and testimonials

[46] Affected party A takes the position that its customer references listed on pages 14 to 16 is information that is commercially valuable in nature and should not be disclosed. For the same reasons, it also takes the position that the client testimonials that it has provided on pages 17 to 18 should not be disclosed. Affected party A submits that the identity of its clients is not publicly known and to disclose this commercially valuable information would allow a competitor to discern the market segments that it is focusing on. It submits that its customers' identities are commercially valuable information and disclosure could reasonably be expected to give rise to the harms in sections 17(1)(a), (b) and (c).

[47] Previous orders have found that disclosure of customer lists could cause the types of harm set out in sections 17(1)(a) and (c), as they are commercially valuable to the third parties that hold them and their disclosure could give competitors an undue advantage over them.²² I have carefully considered the information in proposal A that sets out affected party A's customer references and details their client testimonials. While I acknowledge this information does not amount to affected party A's complete

²² See for example, Order MO-2686.

customer list, I accept that the way in which this information is presented in its proposal is sufficiently detailed that its disclosure would enable a competitor to discern the market segments that affected party A is focusing on. I further accept that discerning the market segments that affected party A is focusing on could reasonably be expected to significantly prejudice affected party A's competitive position and interfere significantly with their contractual or other negotiations with their clients or prospective clients (section 17(1)(a)). I also accept that this type of information is not normally made public and disclosure could result in an undue loss to affected party A and a corresponding undue gain to its competitors (section 17(1)(c)).

[48] I note that Appendix 2 to the proposal consists of affected party A's complete customer list. For the reasons set out above, I am satisfied that affected party A's complete customer list in Appendix 2 is also exempt from disclosure under sections 17(1)(a) and (c).

Rated requirements

[49] LAO's RFP contained a number of rated requirements for the proponents to address in their proposals. These rated requirements set out LAO's minimum expectations for the provision of multi-language and translations services. Each of the proposals contain information that addresses those requirements.

Qualifications and experience

[50] Affected party A submits that disclosure of its qualifications and experience described on pages 19 to 22 would reveal its volume of sales in different market segments which in turn would reveal its strategy and primary focus for developing its business. It submits that disclosure of this information would also permit competitors to assess potential price points based on the volumes. Affected party A submits that, as a result, disclosure of this information could reasonably be expected to give rise to the harms in sections 17(1)(a) and (c).

[51] I have carefully considered the information on pages 19 to 22, which sets out in detail the types of services affected party A has provided to a cross-section of its clients, as well as a granular breakdown of the volume of those services over several identified periods of time. I accept that information of this nature is commercially valuable and that, if disclosed, it could reasonably be expected to result in prejudice to affected party A's competitive position (section 17(1)(a)) and result in undue gain to its competitors (section 17(1)(c)).

[52] Additionally, I note this information reveals the identity of a significant number of the affected party's clients that are most relevant to the services affected party A proposes to supply to LAO. For the same reasons that I provided when examining customer references and client testimonials, above, I accept that disclosure of this information would allow a competitor to discern the market segments that affected

party A is focusing on and reveal information that is not normally made public. As a result, I accept that disclosure of this information could reasonably be expected to give rise to the harms set out in sections 17(1)(a) and (c).

Service model, capacity and approach

[53] Affected party A submits that disclosure of the description of its service model, capacity and approach for both interpretation and translation services set out on pages 24 to 56 could result in the harms in sections 17(1)(a) and (c).

[54] More specifically, affected party A submits that disclosure of information related to its proposed workflows for interpretation and translations services on pages 24 to 31 would reveal processes that they have developed over the years that lower their costs, thereby prejudicing its competitive position and providing its competitors with an undue gain.

[55] Affected party A also points to a chart, on pages 34 to 40 of its proposal, which sets out the languages that it offers its services in and the number of interpreters it has in each language for each type of service. It submits disclosure of this chart could reasonably be expected to reveal to its competitors both its unique mix of languages as well as where affected party A is placing its recruitment efforts, which it argues, gives them a competitive advantage that is not otherwise known.

[56] Affected party A further submits the following types of information are commercially valuable as they reveal unique processes and procedures with respect to services that it has developed over time; it also submits that these processes and procedures form key components of its strategy with respect to its response to the specific RFP:

- information setting out its service level standards, including statistical information with respect [to] its response time for the provision of services (page 32);
- information describing its specific processes for language identification (page 41);
- information setting out its response time for providing its services and the average wait time for each service based on language (page 42);
- information describing its capacity for multi-language interpretation and translation services on (page 43); and
- information describing its processes and procedures for telephone-based operations, in-person interpretation and document translations, the technology it proposes to use for video services, and its practices and protocols with respect to disaster recovery and confidentiality (pages 44 to 56 and Appendix 4).

[57] Affected party A submits that disclosure of this commercially valuable information would show where its competitive advantage in terms of economies of scale originates, which would have a direct impact on costs and prices. It submits that, as a result, disclosure could reasonably be expected to result in the harms contemplated by sections 17(1)(a) and (c).

[58] Previous decisions of this office have dealt with the issue of harm under section 17(1) in relation to the contents of bid proposals submitted in response to RFPs. In these decisions, notably Orders MO-2151 and PO-3310, a distinction is made between information relating to an affected party's history, experience and qualifications which may be publicly known and information about the manner in which the affected party proposes to meet the requirements in the RFP. These orders affirm that in reviewing the proposal, the adjudicator must consider the evidence and whether disclosure of these different types of information could reasonably be expected to result in the harms set out in section 17(1)(a) and (c). In addition, this office has not found the harm in section 17(1) has been established where an affected party has simply argued that disclosure of the form and structure of its proposal will result in a more competitive market for the affected party in future RFPs.²³

[59] I accept that all of the information which describes the affected party A's service model, capacity and approach, described above, is specialized commercial information that the affected party has expended money, time and effort to create, both with respect to the general services that it offers, and also with respect to the specific services that it proposes to provide to LAO in response to the RFP. I accept that this information would be valuable information in the hands of a competitor and could reasonably be expected to significantly prejudice affected party A's competitive position under section 17(1)(a) and also result in it suffering undue loss while providing a corresponding undue gain to its competitors under section 17(1)(c).

Staffing model and organizational chart

[60] Affected party A submits that the following information was compiled specifically for LAO and optimized to meet its exact needs:

- information about its staffing model and account management team (including organizational chart and a description of the management team it would supply to LAO) (pages 57 to 60); and,
- a list of the number of translators and interpreters that it would supply to LAO (page 67).

[61] Affected party A submits that disclosure of this information, specifically tailored for LAO, could reasonably be expected to result in the harms set out in sections 17(1)(a) and (c).

²³ Order PO-2748.

[62] On my review, page 57 provides an overview of the affected party A's management and staffing model. It provides a general account of the experience that its team members have based on services that the company has previously provided to other clients. In providing this general description to demonstrate how affected party A's employees have the experience to provide the services requested by LAO, page 57 reveals a particular cross-section of affected party A's clients. I accept that affected party A specifically tailored this list to demonstrate to LAO how its prior experience places it in a position to provide the services sought by LAO. I also accept that it reveals affected party A's unique mix of experience that lends itself to the requirements of the services sought by LAO. In my view, this is commercially valuable information, not generally known, disclosure of which could be used by competitors in a manner that could reasonably be expected to result in the harms set out in sections 17(1)(a) and (c).

[63] Page 58 is affected party A's company organizational chart that identifies staff by name and by position and sets out where they are positioned within the company's organizational structure. I find that affected party A has not established that disclosure of the organizational chart could reasonably be expected to result in prejudice to its competitive position under section 17(1)(a) or undue loss to it under section 17(1)(c). As affected party A also claims the mandatory personal privacy exemption at section 21(1) applies to this information, I will also consider it in my discussion on the application of that exemption, below.

[64] Pages 59 to 60 provide the names and biographical information of the key staff members that affected party A proposes will work on the LAO account. This biographical information describes each individual's professional qualifications, their related project experience and their proposed roles on the LAO account, if the bid is successful. It describes what duties and responsibilities they will be responsible for. I find that affected party A has not established that disclosure of this information could reasonably be expected to result in significant prejudice to its competitive position under section 17(1)(a) or undue loss to it under section 17(1)(c). However, as with the information set out in the organizational chart, affected party A also submits that the names and biographical information of the employees in these pages is exempt from disclosure under the mandatory personal privacy exemption at section 21(1). As a result, I will also consider this information in my discussion of that exemption, below.

Recruitment and assessment of interpreters and translators

[65] Affected party A indicates that it is prepared to disclose information about its recruitment and assessment of interpreters and translators that it set out in its proposal on pages 61 to 66. However, in its description of how it recruits and assesses the individuals who provide its services, affected party A references a number of policies and procedures, as well as a detailed training program curriculum that it attached to its proposal as appendices 5, 7 and 8. Affected party A submits that the disclosure of appendices 5, 7 and 8 could reasonably be expected to result in the harms set out in

sections 17(1)(a) and (c) because the information within them amounts to commercially valuable information that was developed and implemented by its organization. From my review and consideration of the information in appendices 5, 7, and 8, I accept that it was specifically created and developed by and for affected party A's organization, and that it is information that has commercial value. Accordingly, I find that the disclosure of this information could reasonably be expected to significantly prejudice affected party A's competitive position (section 17(1)(a)) and also result in an undue gain to its competitors (section 17(1)(c)).

Implementation and administration of services

[66] Affected party A submits that information that describes how it proposes to implement and administer its services, including customer support (pages 69 to 71), as well as its methods for invoicing, reporting and ensuring quality control (pages 72 to 85) reveals processes unique to its organization that have been developed and streamlined over the years to minimize its costs. It submits that disclosure would reveal its economies of scale which, in the hands of its competitors, could reasonably be expected to result in the harms contemplated by sections 17(1)(a) and (c).

[67] As noted above, past orders of the IPC have emphasized the importance of distinguishing between information relating to an affected party's experience and qualifications, which may be publicly known, and information about the manner in which the affected party proposes to meet the requirements of the RFP.²⁴ I accept that the information that relates to how affected party A would implement and administer the services required by LAO on pages 69 to 85 has been specifically tailored to meet LAO's needs and that it, if disclosed, would reveal affected party A's service delivery model, which it has expended money and time to design and create. I also accept that this information would reveal processes and procedures related to the delivery of service developed by affected party A over the years. I accept that this type of information is commercially valuable and its disclosure could reasonably be expected to significantly prejudice affected party A's competitive position (section 17(1)(a)) and result in an undue loss to it under section 17(1)(c).

Cost/pricing information

[68] Addressing cost information, which is identified on page 86 of the proposal as being located in a separate Bid Rate Form attached to the proposal (as requested by LAO in its RFP), affected party A submits that disclosure of this information could reasonably be expected to give rise to the harms in sections 17(1)(a) and (c). In particular, it submits that disclosure could reasonably be expected to prejudice its competitive advantage because it would provide its competitors with access to affected party A's unique cost and pricing strategies and insight into its cost structure.

²⁴ See Orders MO-2151 and PO-3310.

[69] Previous orders have found that the disclosure of pricing information could reasonably be expected to result in the harms contemplated by sections 17(1)(a) and (c).²⁵ I agree with the reasoning expressed in these orders. Applying similar reasoning to the information before me, I accept that pricing information submitted by affected party A as part of its proposal details the costs for the different types of services and, if disclosed, could reasonably be expected to significantly prejudice the affected party and provide a competitor with an undue advantage. I accept that this information was developed by affected party A taking into account the particular services required to respond to LAO's particular needs set out in the RFP and it is information that is commercially valuable. As a result, I find that the harms set out in sections 17(1)(a) and (c) could reasonably be expected to occur were this information disclosed.

Proposal B

[70] Affected party B states that it is not prepared to consent to the disclosure of any commercially valuable processes and information in its proposal that could give a competitor a strategic advantage. It provided a severed copy of its proposal indicating that the severed information is information that is strategic in nature and exempt under section 17(1)(a) and (c).

[71] Aside from the severed proposal and the brief comment about the severed information being strategic, affected party B did not otherwise make submissions on how the disclosure of any of the information that it severed from its proposal could reasonably be expected to result in the harms in section 17(1). Despite this, as noted above, the failure of a party resisting disclosure to provide detailed and convincing evidence will not necessary defeat the claim for exemption where harm can be inferred from the surrounding circumstances. While all three proposals are unique to each of the three proponents, they all contain similar types of information because they were prepared in response to the same RFP. As a result, when determining whether section 17(1) applies to the information that affected party B submits and should be severed from its proposal, I will consider whether the claimed harms are established on the same basis as with the similar types of information in proposal A.

Preliminary information

[72] To begin, affected party B has severed the completed Form of Offer, which is Appendix C on pages 4 to 7 of its proposal. This is a standard form each proponent must complete, which provides very general identifying information about its company and confirms the terms of offer. Affected party B has not provided me with any evidence to demonstrate how the disclosure of the information contained in the Form of Offer could result in any of the harms set out in section 17(1) and in my view, none can be inferred from its content. I find that part 3 of the test for exemption under section 17(1) is not met for this information and that it is not exempt on that basis.

²⁵ See Orders P-166, P-610, M-25-, PO-1791, PO-1932, MO-3246 and PO-3748.

[73] The Executive Summary (page 8 and 9) provides a general overview of affected party B's company and the services that it offers. Affected party B has severed portions of it, including information that identifies its subcontractor. Previous orders issued by this office have found that where affected parties have failed to draw a sufficient nexus between disclosure of the names of subcontractors and the reasonable expectation of the occurrence of one or more of the harms in section 17(1), the subcontractor's names should be disclosed.²⁶ I agree with this reasoning and find it relevant to the consideration of the information before me. In the absence of representations to demonstrate for me how the disclosure of any of the information in the Executive Summary, including the name of affected party B's subcontractor, could result in any of the harms set out in section 17(1), I find that affected party B has not established that the exemption applies to this information.

[74] I note, however, that there is one sentence in the Executive Summary that describes biographical information of one of affected party B's employees, who will be a key member of the team involved in providing services to LAO if it is awarded the contract. I will consider this information in my discussion on the possible application of the mandatory exemption at section 21(1), below.

Mandatory requirements

[75] Considering the information affected party B provided to address the mandatory requirements set out in the RFP, and for reasons set out above in my description of the corresponding information in proposal A, I find that disclosure of the following information in proposal B could reasonably be expected to result in the harms set out in sections 17(1)(a) and/or (c):

- Proof of Financial Viability and Proof of Insurance (page 10);
- customer references (pages 11 to 13);
- language availability information, specifically, a chart identifying the languages in which affected party B is able to offer its services and the number of interpreters or translators available in each language for each type of service (pages 14 to 18, a duplicate of this chart is found on pages 26 to 32);and
- client list and customer preferences (pages 21 to 23).

Rated requirements

[76] For the reasons set out above in my analysis of the corresponding information in proposal A, I find that disclosure of the following information in proposal B that responds to the rated requirements set out in LAO's RFP, could reasonably be expected to result in the harms set out in sections 17(1)(a) and/or (c):

²⁶ See, for example, Orders M-602, PO-1722 and MO-2906.

- the description of affected party B's relevant qualifications, experiences and additional, more detailed, customer references (pages 19 to 24);
- the description of affected party B's service model, capacity and approach that will be employed to provide the service sought by LAO (page 25);
- the description of its service level standards, including statistical information with respect [to] its response time for the provision of services (page 25 to 26);
- the notification time required to schedule an interpreter (page 32);
- the average wait time for connection to an interpreter (page 33);
- a description of affected party B's capacity to scale up its multi-language interpretations and translation services as required (page 33);
- information explaining how affected party B operates its telephone-based operations, in-person interpretation and document translation services, including information about quotations, quality control/ quality assurance, software and technology used, turnaround times, disaster recovery practices, protocols and confidentiality (pages 33 to 38);
- information about how affected party B manages the recruitment, assessment and quality assurance of its interpreters and translators (pages 39 to 40 and 44 to 46);
- a list of clients that affected party B's interpreters or translator have worked with (pages 46 to 47); and,
- information about affected party B's administration, quality control and customer support including implementation, invoicing, billing, reporting and quality control (pages 48 to 54).

[77] Among the information that affected party B has severed from its proposal is information about its employees, particularly about key staff who will be involved in the team designated to provide services to LAO. This information includes biographical information about their education and experience as well as, in some cases, a description of the roles they will take on if affected party B is awarded the LAO account. As in my consideration of this same type of information in proposal A, I do not accept that the disclosure of any of this information could reasonably be expected to result in any of the harms listed in section 17(1). As I did above, I find that it is not exempt under that section. However, as with the corresponding information in proposal A, I will consider the possible application of the mandatory personal privacy exemption at section 21(1) to this type of information in proposal B, below.

Cost/pricing information

[78] With respect to information related to costs, as requested in the RFP, affected party B submitted a Bid Rate Form labelled as Appendix A in a separate document. This information provides a breakdown of the costs for the different types of services. For the same reasons as those set out above in my discussion on proposal A, I find that disclosure of this information relating to pricing is exempt under section 17(1)(a) and (c).

Proposal C

[79] Affected party C did not submit representations during my inquiry into this appeal. However, after LAO notified it of the request, it did make brief submissions directly to LAO objecting to the disclosure of its proposal, in its entirety. LAO provided those submissions to this office and I have decided to consider them here. Specifically, affected party C stated that were its proposal disclosed, it could reasonably be “significantly prejudiced with regards to its competitive position” for the following reasons:

- The disclosure of the contents of the proposal [...], including any partial or complete pricing information could reasonably be expected to significantly interfere with ongoing and future contractual negotiations [of the company], adversely affect its competitive advantage and result in an undue loss for the [company], as well as [its] clients currently using the interpretation services.
- The disclosure of the contents of the proposal could reasonably be expected to result in an undue loss of intellectual property of [affected party C].

[80] On my review of proposal C, I conclude that portions of it satisfy the requisite “harms” part of the test for exemption under section 17(1) while other portions of it do not. I acknowledge that affected party C did not make any submissions during my inquiry into this appeal and that previous orders have stated that parties should not assume that the harms under section 17(1) are self-evident.²⁷ However, as previously noted, the failure of a party resisting disclosure to provide detailed evidence will not necessary defeat the claim for exemption where harm can be inferred from the surrounding circumstances. As proposal C contains much of the same types of information as found in proposal A, I will apply similar reasoning to that I applied above when considering the possible application of section 17(1) to the different types of information in proposal C, which is also consistent with my consideration of the information at issue in proposal B, above.

Preliminary information

[81] Affected party C submits that no portion of its proposal should be disclosed to the appellant, including the introductory materials. As noted above, previous orders have made a distinction between information relating to an affected party’s history,

²⁷ See, for example Order PO-2435.

experience and qualifications, which may be publicly known, and information about the manner in which the affected party proposes to meet the requirements of the RFP.²⁸

[82] I find that I do not have sufficient evidence to conclude that the disclosure of any of the preliminary information in pages 1 through 6 of proposal C could reasonably be expected to give rise to any of the harms set out in section 17(1). This includes an Executive Summary and a description of affected party C's history, vision, mission and guiding principles. Accordingly, I find that pages 1 through 6 are not exempt from disclosure under section 17(1).

Mandatory requirements

[83] Based on the proposal C's index on pages 3 and 4 and information contained in the proposal itself, affected party C intended that much of the information that would respond to the mandatory requirements set out in the RFP were set out in the appendices to the RFP. Appendix 1, which is the only appendix that was provided to LAO with the proposal, is a chart listing the languages that affected part C is able to provide its services in, as well as the number of interpreters and translators it has ready to provide each of its services in those languages. For the same reasons as those set out above in my consideration of the corresponding information in proposals A and B, I accept that the language information in the chart could reasonably be expected to result in the harms in sections 17(1)(a) and (c) and it is exempt from disclosure.

Rated requirements

[84] I have also considered the information that affected party C provided to address the rated requirements in the RFP, which set out LAO's minimum expectations for multi-language and translations services.

Qualifications and experience

[85] Affected party C's narrative description of its experience and expertise, as well as its service overview and client overview on pages 7 to 10 of the proposal are very general in nature. On these pages, the information sets out in broad terms the types of services it offers and the various types of clients that it services. Having considered this information, I find that I do not have sufficient evidence to conclude that disclosure of the information on these pages could reasonably be expected to result in any of the harms set out in section 17(1).

Service model, capacity and approach

[86] On pages 10 to 16 of the proposal, affected party C describes its products and services in the areas of both interpretation and translation and how it proposes to provide those services to meet LAO's requirements in the RFP. In keeping with my

²⁸ Orders MO-2151 and PO-3310.

findings with respect to the corresponding information in proposals A and B, and as discussed in more detail below, I accept that the disclosure of this information could reasonably be expected to result in the harms in sections 17(1)(a) and (c).

[87] From my review, I note that affected party C's description of its service model, capacity and approach reveals its proposed workflows for interpretations and translation services, and I accept that these are unique to its company. It includes the following types of information that I have previously accepted as commercially valuable in nature:

- information that describes its processes and procedures for the different types of services it offers (page 10, 11, 13 and 15);
- information about its technology and response times (pages 11, 13 and 14);
- information about the unique mix of languages its services are offered in (pages 12 and 13); and,
- information describing its specific processes for language identification (page 16).

[88] I accept that this type of information describes the manner in which affected party C proposes to meet the requirements of the RFP. I find that this information would be valuable information in the hands of a competitor and, therefore, that disclosure could reasonably be expected to result in the harms set out in section 17(1)(a) and (c).

Staffing model

[89] As the other proponents did, affected party C provides information in its proposal about the staff members who would be involved in providing services to LAO if affected party C is awarded the account (pages 16 to 18). This information includes the names and biographical information of the individuals who would form part of the management team, as well as a description of their duties and responsibilities.

[90] As I found above in my reasons regarding proposals A and B, I do not have sufficient evidence to conclude that disclosure of information about the proposed management team could reasonably be expected to result in any of the harms in section 17(1). However, as with the similar information found in proposals A and B, I will consider whether any of it is exempt under the mandatory personal privacy exemption at section 21(1), below.

[91] The proposal also contains information describing the specific techniques affected party C uses to recruit and assess its interpreters and translators (pages 17 and 18). As with the same type of information in proposal B, I accept that this is commercially valuable information and its disclosure could result in the harms contemplated by sections 17(1)(a) and (c).

Implementation and administration of services

[92] For the reasons set out above for the corresponding information in proposals A and B, I accept that disclosure of the information in proposal C that describes affected party C's administration of its services (pages 18 and 19) could reasonably be expected to result in the harms contemplated by sections 17(1)(a) and (c). This includes the practices and policies that affected party C has developed with respect to billing and invoicing, reporting, quality assurance and performance monitoring. However, I do not accept that I have sufficient evidence to conclude that disclosure of the general information on page 19 that describes how affected party C's insurance coverage and confidentiality practices meet the requirements of the RFP could reasonably be expected to give rise to any of the harms in section 17(1) and will order that information disclosed.

B Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[93] LAO and affected party A claim that the proposals contain personal information that, if disclosed, would result in an unjustified invasion of personal privacy of the individuals to whom the personal information relates under section 21(1). The information for which section 21(1) has been claimed relates to individuals who would form part of the team providing the requested service to LAO. As noted above, although affected party B does not specifically claim that section 21(1) applies, some of the information that it has severed from proposal B is the same type as that claimed by affected party A, in its own proposal, to be exempt under section 21(1). Proposal C also contains this same type of information.

[94] I will consider all of this information here.

[95] In order for section 21(1) to apply, it is first necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved[.]

...

[96] The list of examples of personal information under section 2(1) is not exhaustive.

Therefore, information that does not fall under paragraphs (a) to (h) of the definition may still qualify as personal information.²⁹

[97] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[98] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual.³⁰ Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³¹

[99] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³²

Representations

[100] LAO and affected party A submit that certain portions of the proposals contain the personal information of employees of the proponents. Although affected parties B and C do not explicitly submit that any of the information contained in their proposals is personal information subject to section 21(1), both of their proposals contain similar types of information as that which affected party A claims is exempt under that section.

[101] Specifically, affected party A claims the names of various employees who would form part of the service and management teams of the affected parties, their titles, and the roles they would take on were their company awarded the contract, consist of personal information that is exempt under section 21(1) of the *Act*. All three proposals contain information of this type, which also includes descriptions of the individuals’ professional experience and qualifications.

[102] Affected party A also claims that an organizational chart identifying its employees

²⁹ Order 11.

³⁰ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³¹ Orders P-1409, R-980015, PO-2225 and MO-2344.

³² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

by name and position consists of personal information. Affected party C has included a similar organizational chart in its proposal.

[103] Finally, although affected party B has not explicitly claimed section 2(1) applies to any information in its proposal, it has indicated in severances made to its proposal that the name and contact information of its primary contact for the purposes of the proposal should not be disclosed.

[104] I will consider whether any of this information qualifies as personal information as that term is defined in section 2(1) of the *Act*.

Analysis and finding

[105] I have considered the information that describes the professional experience and qualifications, including relevant past employment and education, of these individuals who would form part of the affected parties' service and management teams for the provision of services to LAO. In my view, it is similar to the type of information found in resumes, which this office has found to qualify as information relating to the education or employment history of an identifiable individual as contemplated by paragraph (b) of the definition of "personal information" in section 2(1).³³ As a result, I find that this information qualifies as the personal information of the individuals to whom it relates.

[106] I find that the remaining information, which the parties suggest consists of personal information, to be information that identifies the individuals in their professional or business capacity and therefore, does not qualify as personal information due the application of the exception in section 2(3) reproduced above. This includes the information in organizational charts which set out the names of employees, their titles and how their position is situated within the organization. The name, title and contact information of the affected party B's primary contact for the purposes of the proposal. I have also considered whether any of this information that I have found to fall under the exception in section 2(3) for professional or business information nonetheless reveals something of a personal nature about those individuals,³⁴ and I conclude that it does not.

[107] Based on these findings, the only information in the proposals that I find qualifies as "personal information", as that term is defined in section 2(1) of the *Act*, is the affected parties' descriptions of the relevant education and prior employment experience of the individuals who would form part of their respective service and management teams were their organization awarded the LAO contract. As the personal privacy exemption can only apply to personal information, this background information about the proponents' employees is the only information I will consider when determining whether the exemption at section 21(1) applies in the context of this appeal.

³³ For example, Orders MO-2151, MO-2193 and MO-2856.

³⁴ See Order PO-2225.

C. Does the mandatory personal privacy exemption at section 21(1) apply to any of the information at issue?

[108] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[109] In this case, the only exception that might apply is section 21(1)(f), which permits disclosure of personal information if it would not constitute an unjustified invasion of personal privacy. The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

[110] Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

[111] Section 21(3)(d) states that disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information relates to employment or educational history.³⁵ A number of past orders have determined that information about employment or educational history, contained in resumes, falls within the scope of section 21(3)(d). I agree with these findings and find that the personal information in the proposals, the descriptions of relevant education and employment history of some of the affected parties' employees, is subject to this presumption.

[112] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(1)(2).³⁶ A presumed unjustified invasion of personal privacy under section 21(1) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.³⁷ Section 21(4) lists situations that would not be an unjustified invasion of personal privacy, none of which are relevant here. Section 23 has not been raised.

[113] As a result, I find that because the disclosure of the personal information contained in the proposals would constitute a presumed unjustified invasion of personal privacy under section 21(3)(d), that personal information is exempt under section 21(1) of the *Act*.

Summary of Conclusions:

[114] In conclusion, I find that neither section 17(1) nor section 21(1) apply to some of the information in the proposals that are at issue in this appeal and I will order LAO to

³⁵ Section 21(3)(d) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information, relates to employment or educational history.

³⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 1993 CanLII 3388 (ON SCDC), 13 O.R. (3d) 767.

³⁷ *John Doe*, cited above.

disclose it. However, I find that section 17(1) and section 21(1) apply to some of the information in the proposals and I uphold LAO's decision to deny access to it.

[115] To assist LAO in identifying the information that I have found to be exempt from disclosure under section 17(1) and 21(1), I will provide it with a copy of the responsive proposals in which I have highlighted the information that it should NOT disclose.

ORDER:

1. I order LAO to disclose to the appellant the portions of the records that I have found not to be exempt under section 17(1) or 21(1) of the *Act*. For the sake of clarity, I will provide LAO with a copy of the records highlighting the information that is NOT to be disclosed.
2. LAO is to disclose the non-highlighted information in the records to the appellant by **March 30, 2021** but not before **March 25, 2021**. I reserve the right to request that LAO provide me with a copy of the information provided to the appellant under this provision.
3. The timeline noted in order provision number 2 may be extended if LAO is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such extension requests.

Original Signed by: _____
Catherine Corban
Adjudicator

February 23, 2021 _____